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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Absopure Water Company

Serial No. 75/442,768

John P. Guenther of Rader, Fishman & Grauer PLLC for
Absopure Water Company.

Heather D. Thompson, Trademark Examining Attorney, Law
Office 103 (Michael A. Szoke, Managing Attorney).

Before Cissel, Seeherman and Wendel, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Absopure Water Company has appealed from the final refusal of the Trademark Examining Attorney to register HYDRATION STATION as a mark for "retail beverage vending services featuring mobile and stationary beverage sampling booths."¹ Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the

¹ Application Serial No. 75/442,768, filed March 2, 1998 and asserting a bona fide intention to use the mark in commerce.

ground that applicant's mark is merely descriptive of its services.

Both applicant and the Examining Attorney have filed briefs.² An oral hearing was not requested.

In support of the refusal the Examining Attorney has made of record and relies on the following dictionary definitions:

Hydrate: to supply water to (a person, for example) in order to restore or maintain fluid balance;³ to combine chemically with water⁴

Station: the place, building, or establishment from which a service is provided or operations are directed: a *police station*;⁵ a place equipped for some particular kind of work, service, research or the like: *gasoline station*; *geophysical station*.⁶

² With its appeal brief applicant has submitted a copy of its registration for THE HYDRATION DRINK for drinking water. Applicant had previously referred to this registration in its response to the first Office action, and the Examining Attorney implicitly recognized this registration in the following Office action. Therefore, although applicant should have submitted the registration during the prosecution of the application in order to make it of record, see Trademark Rule 2.142(d), in view of applicant's and the Examining Attorney's actions, we deem the registration to have been stipulated into the record.

³ The American Heritage Dictionary of the English Language, 3d ed. © 1992.

⁴ Random House Unabridged Dictionary, 2d ed.

⁵ The American Heritage Dictionary of the English Language, 3d ed. © 1992.

⁶ Random House Unabridged Dictionary, 2d ed.

The Examining Attorney has also made of record excerpts retrieved from a search of the NEXIS data base:⁷

Pinellas Marine Institute students will staff hydration stations along the way, and swimmers can come out of the water to drink or eat.
"St. Petersburg Times," September 24, 1997

...marathon destination. Team members will participate in seminars led by experts, training runs with hydration stations, team T-shirts, a bon voyage pasta party and the opportunity to meet the patient they are running in honor of...
"The Palm Beach Post," May 4, 1995

...fans at Old Fort Dallas on Thursday were more interested in other attractions, such as the Rain Room--a hydration-station-turned-mud-pit.
[article about Lallapalooza]
"The Dallas Morning News," July 26, 1996

...more than 100 spectators and athletes had to be treated for heat distress. For the athletes, A.C.O.G. plans to have more shade and hydration stations at Olympic Stadium than USA Track & Field did.
"Time," July 15, 1996

⁷ Two additional excerpts were submitted by the Examining Attorney. However, one consists only of the headline "HYDRATION STATION; restaurants selling bottle [sic] water," and there is simply not sufficient context for this excerpt to be useful in making our determination herein. The second excerpt appears to have been retrieved by the search simply because of the juxtaposition of the words "station" and "hydration," "Riders should drink one to two bottles of water between each aid station to maintain sufficient hydration...", and is irrelevant to our determination of the issue of whether HYDRATION STATION is merely descriptive of the identified services.

...designed to resemble a space station with lots of chrome and jargon. The elevator was a "vertical transport." The water fountain was a "hydration station." The exit signs read "Egress." [article about astronaut camps]
"Omaha World-Herald," August 6, 1997

Orlando's efforts include more drinking fountains--or "hydration stations"--at the Citrus Bowl, teams of roving medics in the stands, additional first-aid trailers...
"The Orlando Sentinel," May 29, 1994

...bottle of Evian water and a 25-min. video of "the making of" Perfectly Fit. Evian plans to set up three "hydration stations" at each department store, doling out product and displaying the videos, which will be on sale elsewhere in the stores...
"BRANDWEEK," November 6, 1995

Finally, the Examining Attorney points to statements made by applicant in its website discussing water and health, in particular the statement, "Replenishing the water your body needs is called HYDRATION. You must drink as much water as you use, or you will become DEHYDRATED, which can have serious negative effects."

A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Act, if it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. Moreover, the question of whether

a term is merely descriptive is not decided in a vacuum, but in relation to the goods on which, or the services in connection with which, it is used. **In re Venture Lending Associates**, 226 USPQ 285, 286 (TTAB 1985).

On the other hand, a mark is suggestive (and therefore registrable without evidence of acquired distinctiveness) if "imagination, thought, or perception is required to reach a conclusion on the nature of the goods" or services. **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). As the courts have frequently recognized, it is often difficult to determine when a term moves from the realm of suggestiveness into the sphere of impermissible descriptiveness, and the distinction is undoubtedly often made on an intuitive basis rather than as a result of a logical analysis susceptible of articulation. **In re Recovery, Inc.**, 196 USPQ 830 (TTAB 1977).

After carefully considering all of the evidence and arguments, we find that HYDRATION STATION for retail beverage vending services featuring mobile and stationary beverage sampling booths falls on the suggestive side of the line.

The definitions of "hydrate" and the use of the word "hydration" on applicant's website indicate that "hydration" has a medical or physiological significance,

e.g., supplying water to restore or maintain fluid balance, or combining chemically with water, or replenishing the water in one's body. It is not a term that would ordinarily be used in connection with retail beverage vending services. Further, the NEXIS articles, for the most part, reinforce this medical connotation. Four of them use the term "hydration station" in connection with athletic or other events to refer to places in which the participants can rehydrate themselves or otherwise prevent or be treated for dehydration.

Because of the physiological significance of "hydration," and the particular meaning of "hydration station" as shown in these articles, consumers would have to engage in some mental steps to fit the concept of a HYDRATION STATION to applicant's identified retail beverage vending services. See **In re Reynolds Metals Co.**, 480 F.2d 902, 178 USPQ 296 (CCPA 1973) (BROWN-IN-BAG found not merely descriptive of transparent plastic film bags); **In re Universal Water Systems, Inc.**, 209 USPQ 165 (TTAB 1980) (PURITY found not merely descriptive of water filtering units, water filter cartridges and water softening units).

Further, the mark HYDRATION STATION rhymes, and this fact gives the mark a certain catchiness which creates an impression separate and apart from the words themselves.

See **In re Colonial Stores Inc.**, 394 F.2d 549, 157 USPQ 382 (CCPA 1968), in which SUGAR & SPICE was found not merely descriptive of bakery products because it does not tell potential purchasers only what the goods are, or their characteristics or ingredients. In its opinion, at 157 USPQ 384, the Court quoted with approval the following statement made in **Ex parte Barker**, 92 USPQ 218 (Com. Pat. 1952):

While it may be true that each of the individual words in the present applicant's mark are generic and thus independently unregistrable, it seems to me that their unusual association or arrangement in the applicant's mark results in a unique and catchy expression which does not, *without some analysis* and rearrangement of its components suggest the contents of applicant's goods." (emphasis in quote)

The mark HYDRATION STATION has this same kind of catchiness. In fact, it appears to us that it is because of this rhyming catchiness, and the very strangeness of the term, that both a space camp and the city of Orlando chose to use the phrase "hydration station" to refer to a water fountain, just as the term "vertical transport" was used as a convoluted way of referring to an elevator. We also note that in the articles reporting this information, the term

"hydration station" is represented in quotation marks, further indicating that this is an odd term to use.

The only article which arguably refers to a "hydration station" in a retail context is the report that "Evian plans to set up three 'hydration stations' at each department store, doling out product and displaying the videos, which will be on sale elsewhere in the stores...." Even here, though, the use of quotation marks indicates that "hydration station" is not a normal term for a place where water would be distributed in a retail store.

In sum, because of the rhyming, catchy nature of HYDRATION STATION, and the evidence that this term is normally used to refer to places at athletic events where competitors can rehydrate themselves, we find that this term does not immediately convey information about a characteristic or quality of applicant's retail beverage vending services.

To the extent that there is any doubt about this conclusion, we follow the established practice that, where reasonable people may differ, doubt must be resolved in the applicant's favor. **In re The Gracious Lady Service, Inc.**, 175 USPQ 380 (TTAB 1972).

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In reaching this conclusion we give effect to the established practice that, where reasonable people may differ, doubt must be resolved in the applicant's favor. **In re The Gracious Lady Service, Inc.**, 175 USPQ 380 (TTAB 1972). To the extent that there is any doubt

Decision: The refusal of registration is reversed.

R. F. Cissel

E. J. Seeherman
Administrative Trademark Judges
Trademark Trial and Appeal Board

Wendel, Administrative Trademark Judge, dissenting:

I find the evidence of record fully adequate to establish that the phrase HYDRATION STATION, if used in connection with applicant's beverage vending services which are provided at mobile and stationary sampling booths, would immediately convey information to consumers as to the nature of these beverage sampling booths. The dictionary definitions, as well as applicant's web page, demonstrate that "hydration" would reasonably be interpreted as the replenishment of the body with fluids, particularly water. I find no reason to limit this term to one of medical or physiological connotation; instead, I am convinced that the ordinary consumer, upon encountering the term HYDRATION being used in connection with a beverage sampling booth, would immediately grasp the significance of the term. Applicant is providing beverages, most probably water, which will replenish the fluids in your body. The additional term STATION is, by dictionary definition, no more than an apt name for a place from which a service is provided.

I have no problem with the fact that the Nexis articles for the most part show use of the term "hydration station" in connection with locations at which athletes may obtain fluids in order to combat dehydration. The

connotation of the term is the same; this is a place where beverages, particularly water, may be obtained which will replenish bodily fluids. Furthermore, I do not find the mere fact that HYDRATION STATION rhymes sufficient to conclude that the mark creates an impression separate from the descriptive connotation of the words themselves. This is not a mark similar to SUGAR & SPICE; there is no "analysis and rearrangement" required to comprehend the descriptiveness of HYDRATION STATION when used in connection with beverage sampling booths.

Accordingly, I would affirm the refusal to register under Section 2(e)(1).

H. R. Wendel
Administrative Trademark Judge
Trademark Trial and Appeal Board